





EXHIBIT (for identification only)
Filed Public Comment - Fernd
By [Signature]
Deputy



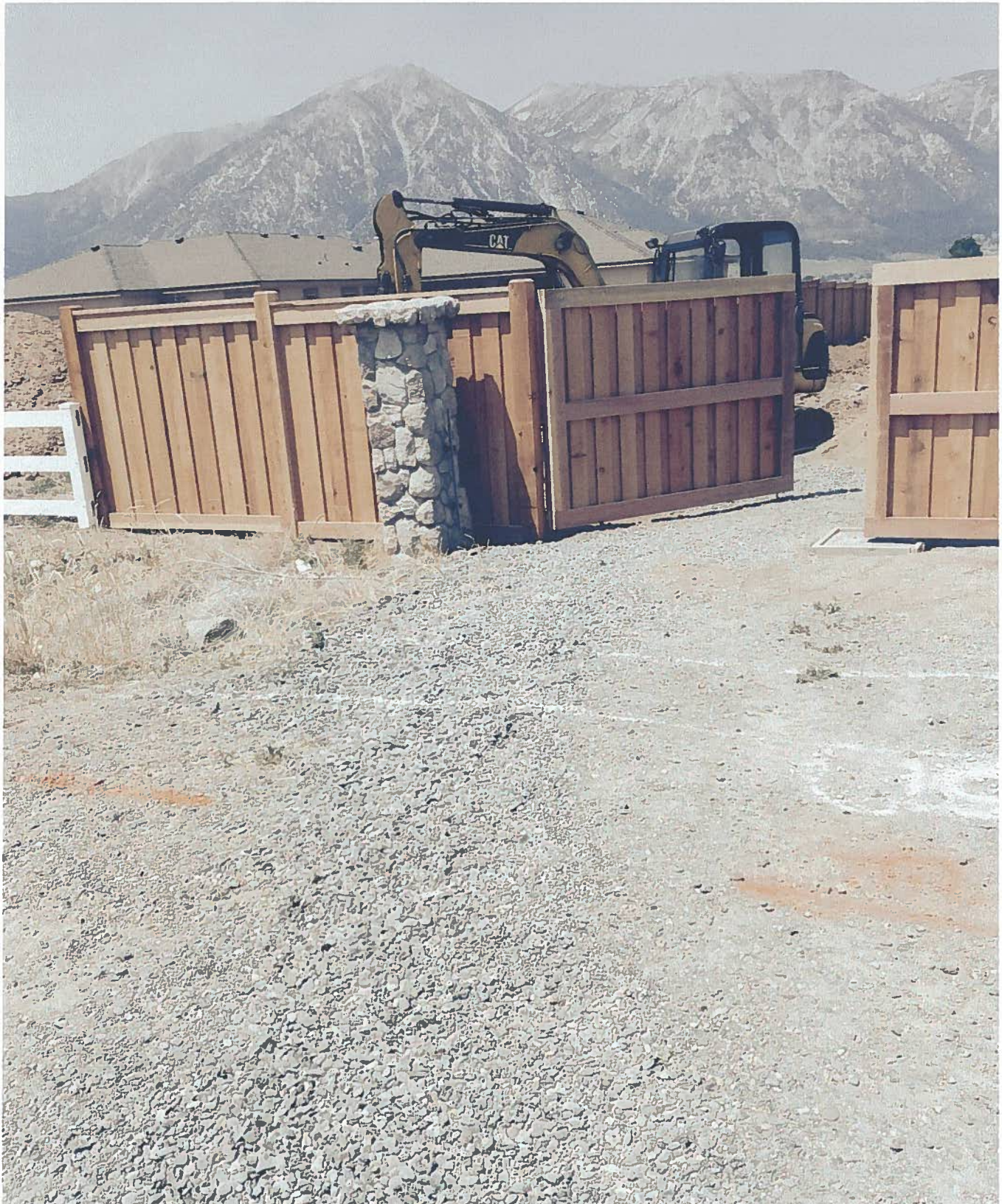
From: **Rick Ferko** ferko.richard@sbcglobal.net 
Subject:
Date: July 2, 2015 at 12:04 PM
To: **elizabeth ferko** elizabethferko@mac.com

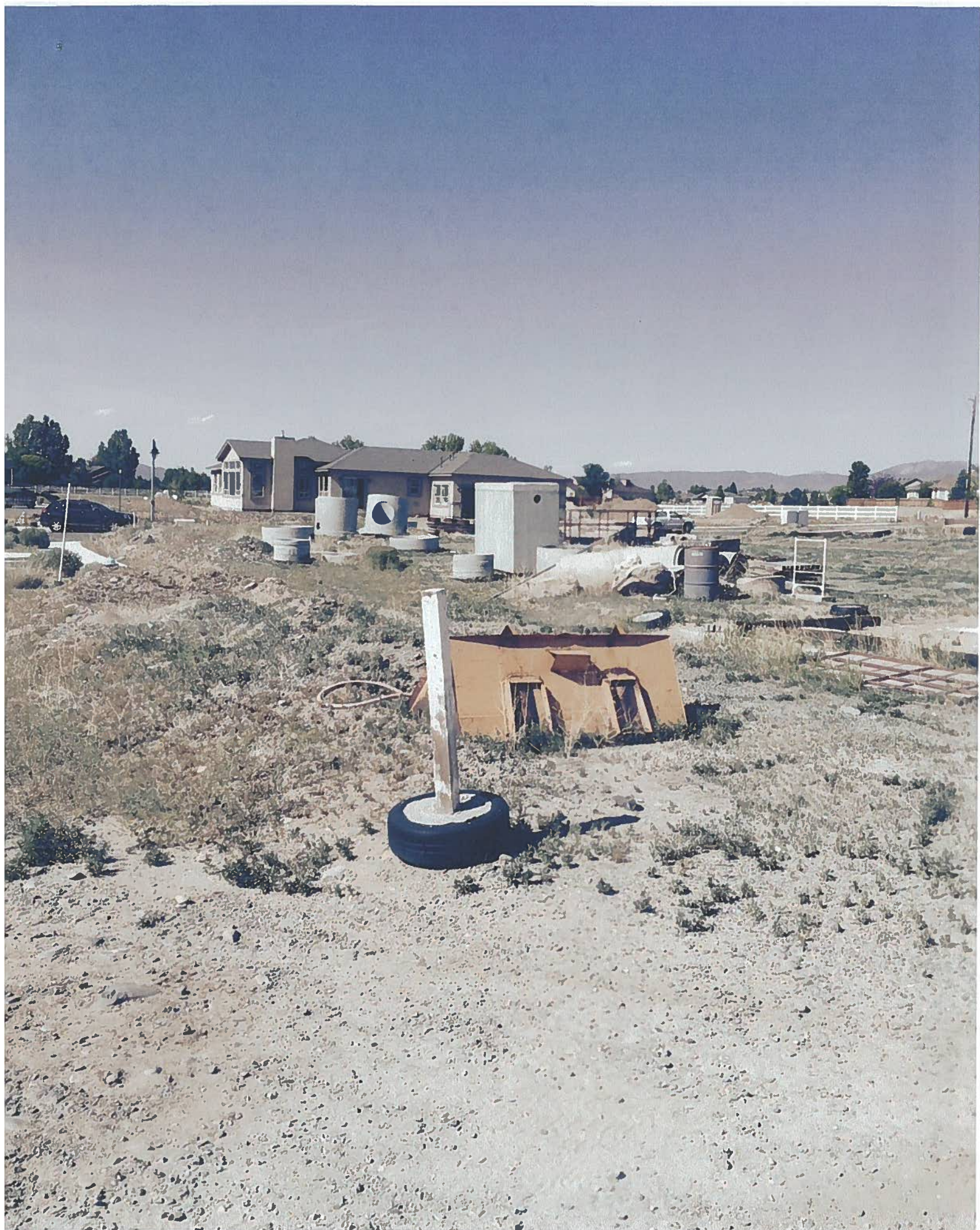
RF



From: **Rick Ferko** ferko.richard@sbcglobal.net 
Subject:
Date: July 2, 2015 at 12:03 PM
To: **elizabeth ferko** elizabethferko@mac.com


RF










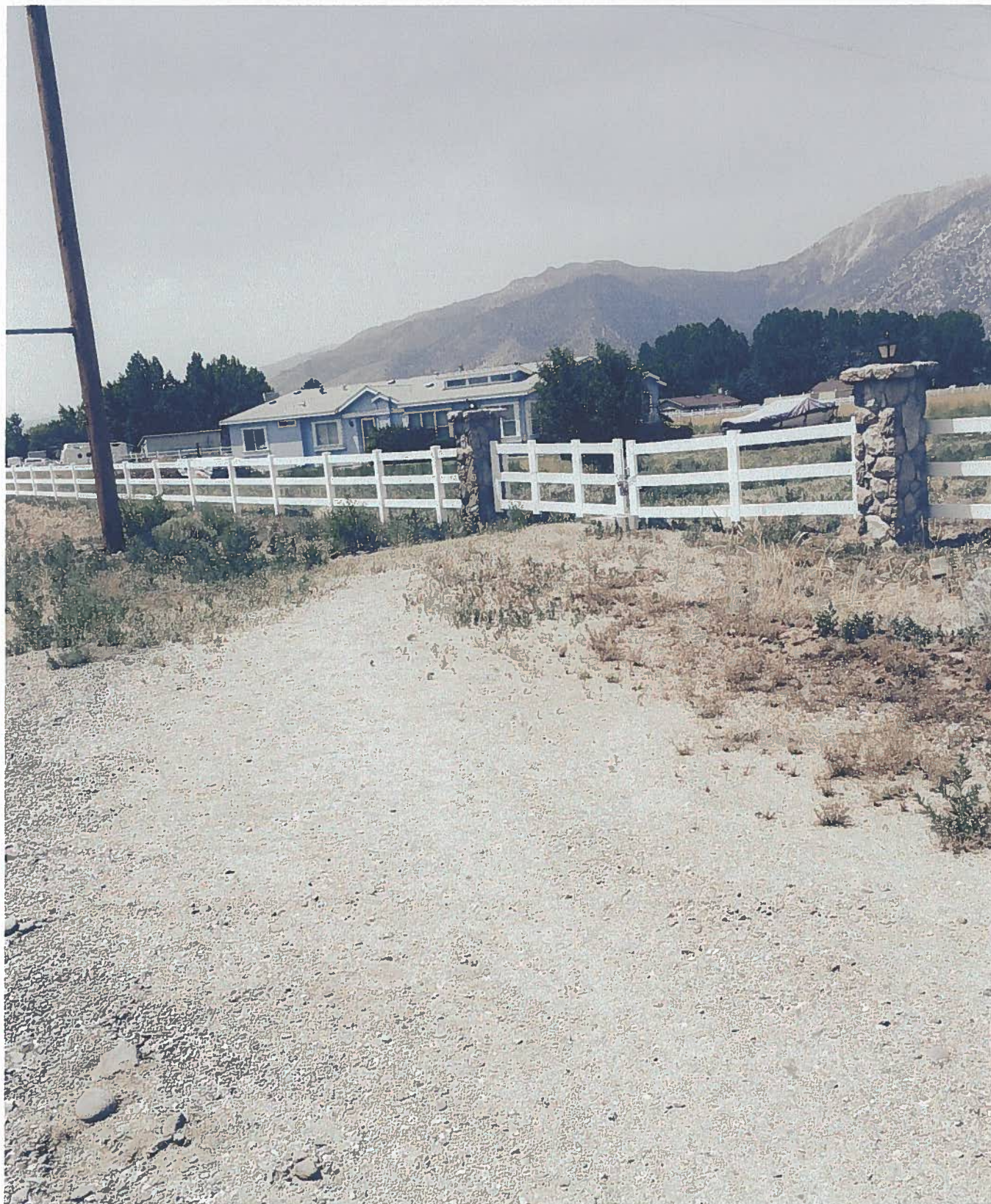
From: **Rick Ferko** ferko.richard@sbcglobal.net 
Subject:
Date: July 2, 2015 at 12:05 PM
To: **elizabeth ferko** elizabethferko@mac.com

RF

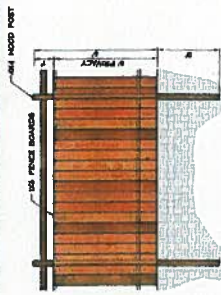


From: **Rick Ferko** ferko.richard@sbcglobal.net 
Subject:
Date: July 2, 2015 at 12:07 PM
To: **elizabeth ferko** elizabethferko@mac.com

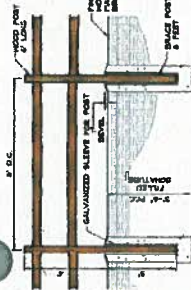
RF



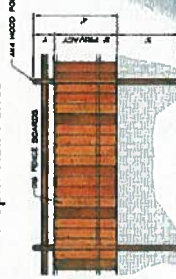
Esplanade at The Ranch - Conceptual Site Plan



Type 'A' Fence
6' Privacy Fence



Type 'B' Fence
4' Split Rail Fence



Type 'C' Fence
4' Combination Fence



EXHIBIT (for identification only)
Filed _____
By _____
Deputy _____

Inaccuracy of staff's open space percentage for Esplanade Project,
as presented to the DC BOCC on June 4, 2015

Senior Planner Emery Papp's presented percentage (courtesy of RO Anderson): **23.64%** !!!

RO Anderson re-calculation: 17%

Mr. Papps calculation: 13%

Realistic calculation: 5%

<u>Realistic calculation includes:</u>	<u>% of total area</u>
1) 3575 s.f. for retention basin area	2.82%
2) 1600 s.f. for gazebo/picnic area	1.26%
3) 1250 s.f. for turf adj. to picnic area	<u>0.98%</u>
Total	5.06%

<u>Unrealistic (Papp) calculation would include:</u>	<u>% of total area</u>	<u>Comments</u>
1) 2685 s/f for driveway l/s	2.11%	isolated trees by concrete
2) 1800 s.f. for l/s area adj to RV parking	1.42%	stones, parking, a few trees
3) 1750 s.f. for area 5' bet. fence & sidewalk	1.38%	barren, outside dev't
4) 980 s.f. along Gilman (outside fence)	0.77%	stones, by road, occ. trees
5) 975 s.f. at NEC of site	0.77%	stones, 3 trees
6) 840 s.f. for l/s at NEC of Concho Lasso	0.66%	by roads, stones, few trees
7) 550 s.f. for l/s at NWC of Concho/Cinch	0.43%	concrete, 2 trees
8) 540 s.f. for l/s along Lasso	<u>0.43%</u>	by road, no l/s shown
Total	12.03%	

Completely unacceptable (ROA) calculation would include:

13,462 s.f. of private yard space (fenced)	10.62%
--	--------

Sullivan, Hope

From: Papp, Emery
Sent: Monday, June 08, 2015 4:15 PM
To: Sullivan, Hope
Subject: RE: Open Space Esplanade

Appendix A of Title 20 of the Douglas County Code defines "Open space" as: "All areas of natural plant communities or areas replanted with vegetation after construction including but not limited to revegetated natural areas, trees, shrubs, hedges, lawn, and ground cover planting areas, which provide light and air and are designed for either environmental, scenic, amenity, or recreational purposes." (Ord. 763, 1996)

The total "usable" open space area based on the description contained in Section 20.664.120 Multi-Family Housing and my rough scaling and calculations = **16,545 square feet (13.05%) of the site**. Please note, this calculation does not include all of the landscape and hardscape areas between buildings, or the private back yard areas. Pursuant to the definition of "open space" contained in Appendix A and considering the backyard areas, then **30,007 square feet (23.67%)** of the site is open space, as follows:

- 3,575 s.f. for retention basin area (2.82% of total site)
 - 1,800 s.f. for landscaped area adjacent to RV parking area (1.42% of total site)
 - 1,600 s.f. for Gazebo/picnic area (1.26% of total site)
 - 1,250 s.f. for turf area adjacent to picnic area (0.98% of total site)
 - 975 s.f. for turf area near NEC of site (0.77% of total site)
 - 840 s.f. for l/s at NEC of Concho/Lasso (0.66% of total site)
 - 550 s.f. for l/s at NWC of Concho/Cinch (0.43% of total site)
 - 2,685 s.f. for driveway l/s (2.11% of total site)
 - 1,750 s.f. for area 5 feet between fence and sidewalk along Heybourne (1.38% of total site)
 - 980 s.f. for l/s along Gilman (0.77% of total site)
 - 540 s.f. for l/s along Lasso between Cinch/Heybourne (0.43% of total site)
- 16,545 s.f.**

Additionally, there are:

- 13,462 s.f. of private yard space for ground floor units (10.62% of total site) {NOTE: 4,200 s.f. is required per Code (150 s.f. x 28 ground floor units), the remainder could be converted to common open space}
- 30,007 S.f.**
- Additional, uncalculated area between buildings

Per R.O. Anderson, the amount of open space on-site without the backyards is 21,672 s.f. (17.09%). When considering the backyards of ground floor units, the calculation is 35,134 s.f. (27.71%).

Emery J. Papp
Senior Planner
Douglas County
Community Development Department
1594 Esmeralda Avenue
P.O. Box 218
Minden, NV 89423
(775) 782-9012
epapp@co.douglas.nv.us
<http://www.douglascountynv.gov>



Jim Slade <slade.jim@gmail.com>

Open Space at Esplanade

13 messages

Sullivan, Hope <HSullivan@douglasnv.us>

To: "Jim Slade <slade.iim@gmail.com> (slade.iim@gmail.com)" <slade.iim@gmail.com>

Cc: "Nichols, Jim" <JNichols@douglasnv.us>, "Moss, Mimi" <MMoss@douglasnv.us>

Wed, Jun 10, 2015 at 4:51 PM

jim:

Hi. I'm sorry that I wasn't aware of your scheduled meeting earlier today or else I would have made sure all of the info was available for you prior to going up the hill to TRPA.

In short, you were correct. The open space at the Esplanada at the Ranch at Gardnerville is NOT 23 percent. Emery did consult with the project engineers, and, using the definition found in Appendix A, has advised the open space provided is 17 percent. Emery also performed a rough calculation by hand and came up with 13 percent. I suspect the autocad result provided by the project engineer is closer to the correct number.

Of note, the Esplanade does not have a requirement to provide a certain percentage of open space, although there is a requirement for private backyards and balconies, as well as amenities.

Please know that Mimi and I expect the staff to independently fact check information, and not to be merely a "pass through." I am not pleased erroneous information was supplied to the Commission and the Board. I have met with staff today and advised them each of the expectation, and will be more hands on in scrutinizing the details.

Please advise if you have additional questions.

Hope Sullivan

775-782-6200

BCCC, LP, Hope

Board of County Commissioners
PO Box 218
Minden, NV 89423

RECEIVED

JUN 26 2015

Douglas County Manager

There has been much vocal opposition to the solar project located on agricultural land in Douglas County. With the ordinance the way it is today I see no reason for it not to be approved. Park Cattle Company is a business and like any other business its goal is to make a profit and be sustainable for itself and its employees. The fact that what they are proposing is on land with questionable production potential and is adjacent to a substation for transmitting electric power seems to me to be the perfect place for the solar panels. The argument that the electricity generated will go to California is weak at best since most of Nevada's power comes from Idaho.

The other argument against the solar panels is the view. Any views in Carson Valley are not, nor ever have been, guaranteed by any government entity or individual. The county many years ago did implement restrictions on how far up the face of the Sierras building could be done but have not implemented any such rule for the valley itself. The opinion that one has a right to the view is very much arguable in the fact that when your house was built it might have affected the view of your neighbor or someone else in the valley. If we each had a right to a beautiful view then I wouldn't be the only house in the valley that has to look at the back of the new (very large) Community Center.

In 2000 we tried to pass a ¼ cent tax increase to purchase open space in Carson Valley so it would not be developed. At the time it seemed the fair way to go to preserve land for everyone and still have agriculture be privately owned and a viable business. Since it was not passed by the voters we have each had to come up with ways to stay in business and if solar panels are that solution then I think the project should be approved and protect property rights.

Kathi Hussman
1250 Hwy 395 N
Gardnerville, NV 89410
775-782-8729

EXHIBIT (for identification only)

FILED 6/26/15
By [Signature]
Deputy

JOHNSTON LAW OFFICES, P.C.

22 State Route 208, Yerington, NV 89447 | T: 775-316-1157 | F: 775-463-4032 | bjohnston@johnstonlawoffices.co

June 25, 2015

Mr. Doug N. Johnson, Chairman
Douglas County Board of County Commissioners
1594 Esmeralda Avenue
Minden, Nevada 89423

Ms. Nancy McDermid, Vice Chairwoman
Douglas County Board of County Commissioners
1594 Esmeralda Avenue
Minden, Nevada 89423

Mr. Greg Lynn, Commissioner
Douglas County Board of County Commissioners
1594 Esmeralda Avenue
Minden, Nevada 89423

Mr. Barry Penzel, Commissioner
Douglas County Board of County Commissioners
1594 Esmeralda Avenue
Minden, Nevada 89423

Mr. Steve Thaler, Commissioner
Douglas County Board of County Commissioners
1594 Esmeralda Avenue
Minden, Nevada 89423

Re: Development Application 15-013, a Special Use Permit for a Solar Photovoltaic Facility with Associated Power Generating Equipment on Seven Parcels Totaling 260 Acres.

Dear Commissioners:

Greenstone Renewables ("Greenstone") has retained this firm in connection with the above-referenced development application (the "Application") for a solar photovoltaic farm in Douglas County. I write on behalf of Greenstone in response to certain issues Mr. and Mrs. Steve and Mary Walker have raised in connection with their appeal dated May 26, 2015.

By way of background, I represent several Nevada farmers and ranchers in connection with their agricultural operations, and I have often been tasked with addressing certain land use issues for my agricultural clients. These issues often involve complaints from residential neighbors who

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object to certain agricultural activities. I was, in fact, recently asked to author an article for an issue of Nevada Lawyer devoted to agricultural law, and I focused my article on Nevada's right to farm law. See *Nevada's Right to Farm Law*, Nevada Lawyer, April 2015. I also have a longstanding relationship with the Park family, which owns the property where Greenstone is proposing to locate its solar project in Douglas County. It is with this background that I write to you on Greenstone's behalf in support of the Application.

As I am sure you know, the Douglas County Planning Commission approved the Application on May 12, 2015, granting Greenstone a special use permit to construct and operate a solar photovoltaic facility with associated power generating equipment on seven parcels totaling 260 acres. The Planning Commission did, however, grant the Application and special use permit subject to sixteen separate conditions. These conditions included the following five conditions that specifically address certain issues that Mr. and Mrs. Walker have raised in their appeal:

- The applicant/owner shall obtain a letter from the Minden-Gardnerville Sanitation District regarding the ability of Park Ranch Holdings to continue to accept and apply effluent on the subject parcels, pursuant to an existing reuse agreement.
- The Design Review application must include a fencing detail and lighting detail to ensure that both are consistent with the agricultural character of the area.
- Landscaping between the photovoltaic facility and all property lines shall be maintained as irrigated farmland including native grasses and shrubs, and maintained in a weed-free condition. Additionally, a landscape buffer shall be planted with dense trees and native shrubs and groundcover along the northerly property line to lessen the visual impact for properties located north of the project site at 661 Genoa Lane.
- The applicant/owner shall prepare and submit a detailed dust control plan to address dust control and wind erosion during construction and form interior access roads from disturbed areas once the facility is operating.
- All vegetation shall be managed through implementation of a Vegetation Management Plan to be submitted as part of the Design Review application and approved by the East Fork Fire District and Community Development Director to eliminate the spread of wildfire through the solar farm and to reduce the possibility of fugitive dust, water and wind erosion of the topsoil.

These conditions are obviously intended to minimize any visual impact the solar facility may have and ensure the facility is compatible with the surrounding properties.

On May 26, 2015, Steve and Mary Walker, who reside at 661 Genoa Lane, appealed the Planning Commission's decision to approve the Application with the above-referenced conditions. The Walkers base their appeal, in part, on the assertion that the Planning Commission "did not legally require Greenstone to retain the 260 acres in native pastureland and to continue irrigating it."

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(emphasis in original). The Walkers also allege that the site location “will cause visual pollution” and argue that the Planning Commission did not give adequate attention to the development of a solar facility on existing irrigated pasture. It accordingly appears that the essence of the Walkers’ complaint is their assumption that the Park family must maintain their property as irrigated pasture and not engage in any other use that may impact, among other things, existing views of the irrigated pasture. This assumption is false and fatal to the Walkers’ appeal.

The property at issue in this case is zoned A-19 (Agriculture with parcels of not less than 19 acres). Under Douglas County Code Section 20.654.020, the following uses are permitted as of right, without a design review, on A-19 property: agricultural products processing and storage, and animal keeping. The Douglas County Code further defines “Agriculture” in Appendix A to Title 20 as “[t]he use of land for farming, dairying, pasteurizing and grazing, horticulture, floriculture, apiaries, animal and poultry husbandry, and accessory activities, including but not limited to, storage, harvesting, feeding, or maintenance of equipment excluding stockyards, slaughtering or commercial food processing.” Accordingly, the existing land use laws allow the property at issue to be used for all types of agricultural uses that would result in the loss of the existing irrigated pasture. The Walkers’ appeal based on the potential loss of some irrigated pasture, despite mitigating conditions, critically ignores what is currently permitted at the property as agricultural uses.

More importantly, all of the permitted agricultural uses allowed at the Park’s property are protected under the right to farm laws that both the State of Nevada and Douglas County have enacted. See NRS 40.140(2); Douglas County Code Section 20.01.100. Specifically, Douglas County’s right to farm law provides that “[n]o existing or future agricultural operation or any of its appurtenances conducted in a manner consistent with proper and accepted standards on agricultural land shall become or be a nuisance, for purposes of all chapters of this case, provided the agricultural operation complies with all chapters of this case and provided that the provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural operation.” Thus, the Walkers could not object to any agricultural uses of the Park property, even if those uses resulted in visual impacts, if the agricultural uses complied with applicable local laws and regulations. Again, the Walkers’ appeal ignores the visual impacts that could result from permitted agricultural uses, when they challenge the solar facility based on similar visual impacts.

Based on the foregoing, the Park family (or another operator) could convert the existing irrigated pasture into another agricultural use as a matter of right, and the Walkers would have no basis to challenge the conversion. For example, the Park family could construct a dairy on their property, chicken coops, a feedlot, and/or greenhouses for floriculture and horticulture. And, all of these uses would be permitted without a special use permit or design review. These permitted agricultural uses would have a greater impact on the Walkers than the proposed solar facility; yet, no special use permit would be required, and the Walkers would have no basis to challenge the loss of the irrigated pasture near their residence. Because the Walkers have no right to prevent the conversion of irrigated pasture to other agricultural uses, they have no right to the perpetual existence of the irrigated pasture. Without a right to the perpetual existence of irrigated pasture, they cannot claim that the loss of such pasture requires the denial of Greenstone’s special use permit. Yet, they base their appeal on the assumption that any loss of neighboring irrigated pasture

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is prohibited. This is simply incorrect under existing land use laws. Accordingly, the Walkers' claim that the loss of irrigated pasture to a solar facility requires denial of the Application rings hollow and cannot be reconciled with applicable land use regulations. Furthermore, the Park family will continue to conduct ranching activities on their property (including the site of the solar facility) and Condition 13 to the SUP specifically requires a Vegetation Management Plan. These factors further refute the Walkers' complaints because irrigated pasture will not be lost to what the Walkers call "a dirt, weedy parking lot structure."

Section 26.604.060 of the Douglas County Code provides that when an application for a special use permit is considered, the County must consider whether the proposed project is compatible with the surrounding properties and determine if the proposed use "is consistent with the policies embodied in the adopted master plan and the general purpose and intent of the applicable district regulations." Here, the proposed solar project is certainly compatible with the surrounding properties and consistent with the policies embodied in the A-19 zoning district because the proposed solar facility is less intense and less disruptive than the permitted agricultural uses that are already permitted on the property as of right. There is, therefore, no room for the County Commission to overturn the Planning Commission's decision based on the Walkers' assumption that they are entitled to a perpetual view of irrigated pasture rather than some other agricultural, permitted, or special use. Furthermore, there is no room for the County Commission to overturn the Planning Commission's decision, when, as is the case, the proposed special use is compatible with the surrounding area and less intrusive than those uses that do not require a special use permit.

The purpose of the A-19 district is to "implement the Douglas County master plan, to conserve agricultural resources, preserve open spaces and the rural character of the county, and to direct urbanization into manageable and identified development areas. This is a low density land use district with a maximum permitted density of one home per 19 gross acres." The proposed solar project is consistent with the stated purpose of the A-19 zoning district. First, a solar project is a low density use that is commensurate with agricultural uses already allowed on the property as a matter of right. Second, a solar project preserves open spaces and the rural character of the county because it does not result in a substantial commercialization or any urbanization of the property. Third, given the conditions the Planning Commission placed on the solar facility with respect to irrigation, vegetation, fencing, and lighting, the solar facility will be consistent with surrounding agricultural uses and the rural character of the area. Fourth, to address Douglas County Code Section 20.604.060 Findings (B) and (E), the Planning Commission conditioned the SUP on a landscape buffer to address the Walkers' concerns. Given that no such buffer could be mandated if the property was converted to a permitted agricultural use the Walkers may find offensive, the Walkers' complaints with respect to "visual pollution" have been addressed.

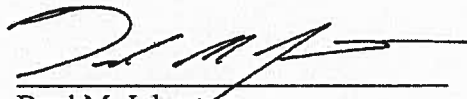
In conclusion, it is important for the County to consider what is allowed as a matter of right at the property in question and determine how the proposed solar facility (with the conditions the Planning Commissions placed on the facility) compares to those existing permitted agricultural uses. Once this comparison is done, the only conclusion that can be reached is that a solar facility on agricultural property is less intense and more compatible with neighboring properties than other permitted agricultural uses that are absolutely protected under State and local laws. If a special use is less intense and more compatible with neighboring properties than other permitted uses, there is no basis or discretionary room to deny a special use permit. Moreover, there is no basis to

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deny a special use permit based on assertions of "visual pollution" due to the loss of irrigated pasture when (i) there is no requirement or guarantee that the irrigated pasture be maintained in its current state under existing laws, and (ii) the Planning Commission adopted specific conditions to address any potential loss of irrigated pasture.

Sincerely,

JOHNSTON LAW OFFICES, P.C.



Brad M. Johnston

To: Nichols, Jim
Cc: Sullivan, Hope; lapetite00@yahoo.com; savecarsonvalley@gmail.com
Subject: proposed solar plant

Dear Mr. Nichols,

Please convey to the Board of County Commissioners our opposition to the proposed solar plant by the Park Cattle Company and Greenstone Renewables, LLC to be considered on Their meeting on July 2, 2015.

Aside from the visual blight, this plant's solar panels will be seen from miles away, and it is NOT consistent with the agricultural nature and culture of our beautiful county.

Additionally, in a recent Wall Street Journal article in the June 13 and 14, 2015, week-end addition on page B1, highlighted a \$2.2 billion plant near the Mojave desert in California, that failed to actually deliver the proposed electrical generation as represented by the parties that developed the plant.

That article also provided a shocking picture of the enormity of the solar plant's obscene view upon the land.

For these reasons and others, we vehemently OPPOSE this solar project.

Sincerely,

Ted and Olivia Warburton
259 Beverly Way
Gardnerville, NV 89460

Sent from my iPad

--

*** Email Manager identified this as CLEAN. Give feedback:

*** This is SPAM: <http://mailstg.co.douglas.nv.us/qs?k=9kiMQ1a.E-gk>

*** More options: <http://mailstg.co.douglas.nv.us/md?k=9kiMQ1a.E-gk>

EXHIBIT (for identification only)
Honorable Ted and Olivia Warburton
Filed 12/30/15
By [Signature]
Deputy

Gregory, Cynthea

From: Gregory, Cynthea
Sent: Thursday, July 02, 2015 9:13 AM
To: 'Derek Fromm'; Sullivan, Hope (HSullivan@douglasnv.us); Mary Walker (marywalker@gbis.com)
Cc: Keith Rutledge; Mimi Moss; Brad Johnston (bjohnston@johnstonlawoffices.co)
Subject: RE: Some additional legal and due process questions
Attachments: BOCC Memo Item 8 07-02-15.pdf

Mr. Fromm-

This office responded to your email through, Brad Johnston, Esq. on the same date it was received. See below. This email is being sent directly to you as Mr. Johnston subsequently provided me consent to directly correspond with Greenstone and Mr. Rutledge's email statement that Mr. Johnston is not legally representing Greenstone.

Pursuant to your request, your email will be included in the record along with the supplemental/new material submitted to the County following publication of the staff report.

As a courtesy, I have attached a copy of a memorandum responding to Greenstone's letter written by Mr. Johnston. It will also be included with the supplemental/new material for purposes of the record.

Thanks,
Cynthea Gregory
Deputy District Attorney
Douglas County District Attorney's Office
Ph# (775) 782-9803
Fax#(775) 783-6490

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From: Gregory, Cynthea
Sent: Monday, June 29, 2015 2:31 PM
To: Brad Johnston; Hope Sullivan; Mimi Moss
Subject: RE: Some additional legal and due process questions

Brad-

Please advise your clients of the professional rules of conduct that prohibit an attorney from speaking to a person/entity represented by an attorney. As you are aware, I represent Douglas County and I am prohibited by the attorney/client privilege from divulging any advice or work product I may provide to my client. Lastly, please be advised your clients have threatened litigation against the County should the appeal be granted.

The issue on appeal and being challenged is the recommended approval of the SUP, thus the recommended approval is the item before the Board. The appeal is a public hearing item, thus new information can be presented to the Board. Your clients will be given an opportunity to make a presentation and can choose during that period of time to challenge any information they believe is not credible.

Thanks,
Cynthea Gregory
Deputy District Attorney

EXHIBIT (for identification only)
FILED
BY
Deputy

Douglas County District Attorney's Office

Ph# (775) 782-9803

Fax#(775) 783-6490

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From: Derek Fromm [mailto:dfromm@greenstonecap.com]

Sent: Wednesday, July 01, 2015 5:13 PM

To: Gregory, Cynthia; Hope Sullivan; Mimi Moss

Cc: Keith Rutledge

Subject: Some additional legal and due process questions

Dear Cynthia:

We refer to our email dated Monday June 29th (see below). To date we have not had a response from your office or the County regarding the points raised in that email - which was based on new information included in the record of which we were only made aware at 8.45pm last Friday.

For the record, we hereby formally object to the new materials that have been included in the record after the Appeal filing date had passed and that these materials were not addressed in the Planning Commission hearings or by Appellant in the formulation of the Appeal claims as filed on May 26, 2015. These materials include particularly the following:

- Appellant memoranda to the BOCC dated June 4 and June 22, 2015 containing new information
- Douglas County Valley Vision 2013 Open Space
- Douglas County Open Space Agricultural Land Preservation Implementation Plan 2007

We also hereby formally object to the integration by Staff of these documents in its findings, and in BOCC Attachment O (8/1315) comprising Alternative Findings to Grant the Appeal and Deny Development Application (DA) 15-013.

Based on prior representations made to us by staff, upon which we reasonably relied, we expected that the BOCC hearing would be limited to a review of the record at the time of the Appeal (May 26, 2015) and be further limited to the actual claims made by Appellants in their Appeal. Accordingly we firmly believe that our procedural due process has been and will be violated by the inclusion, after deadlines for the Appeal had passed, of these materials and findings and it is our opinion that their inclusion in the Alternative Findings should not be considered by the Board.

Moreover, these documents do not represent a regulatory plan which would normally include specific criteria and standards that the proposed Use would be evaluated against. In fact the documents themselves state that "this is not a regulatory plan and not an official planning document" and "not a promise of specific elements".

Accordingly, we respectfully request that these documents and any reference to them be removed from the record.

2. We further hereby formally request that all prior public records, including audio records and transcripts of both prior public meetings and Appellant's Appeal Application that contains a declaration made under penalty of perjury, be made part of the Appeal record.

3. We further hereby formally object to any proposed reliance whatsoever by the BOCC on public comments submitted by members of the public to the County in opposition to the proposed Solar Project, including any Petitions signed in opposition to the Solar Project to the extent that these public comments are based on false or misleading statements made by Appellants in the header of these Petitions, as well as in Appellant's

extensive advertising campaign, including postcards and partuculary containing rhetoric against selling power to California, which could violate Federal Interstate Commerce law.

Sincerely,

DEREK FROMM

GREENSTONE RENEWABLES

480.664.1004 - Phone

480.330.9011 - Mobile

480.718.8386 - Fax

WWW.GREENSTONECAP.COM

WWW.GREENSTONERENEWABLES.COM

6263 N. SCOTTSDALE RD, #290, SCOTTSDALE, AZ 85250

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----- Forwarded Message -----

From: Derek Fromm <dfromm@greenstonecap.com>

To: Cynthea Gregory <cgregory@douglas.nv.gov>; Hope Sullivan <hsullivan@douglasnv.us>; Mimi Moss <mmoss@douglasnv.us>

Cc: Brad Johnston <bjohnston@johnstonlawoffices.co>

Sent: Monday, June 29, 2015 1:38 PM

Subject: Some additional legal and due process questions

Dear Cynthea,

Further to our questions per our email to you last Friday, we were informed at 8:45pm on Friday where to find the full staff report online for our review.

Having reviewed the staff report, we now have the following additional questions:

1. New Materials Added After Filing Deadline. The Walker appeal was filed on May 26, 2015, prior to the filing deadline. We note, however, that Appellants have submitted additional Memos to the Commissioners on June 4th and 22nd suggesting that the Commission also consider this new material, about which the Walkers had raised no claims in their formal Appeal. We also note that Staff in its Findings, particularly Finding A, added LU Policy 3.4 (Staff Report 8/9) referring to the Future Land Use Map - about which Appellant had not raise any formal claim.

2. New Materials Added After Filing Deadline: The Staff Report also contains new material in relation to which Appellants have not referred in their Appeal. Specifically, Staff report pages 8/761 through 942, containing copies of the Douglas County Valley Vision 2013 - Open Space and DC Open Space Agricultural Land Preservation Implementation Plan 2007.

Can you please explain how and on what basis these new documents were included in the record and for what purpose, given that these documents were not questioned by Appellants nor formally raised by them to support their claims. It is our understanding that the Appeal hearing is a quasi-judicial hearing for the Commission to evaluate the claims and supporting evidence submitted by Appellants as formulated in their Appeal dated May 26, 2015, not to introduce new materials and raise new issues after the deadline to formulate and file Appellant's claims has passed.

Please let us know how you plan to address and correct this matter prior to and at the meeting.

3. Grossly Misleading Information disseminated by Appellants to the public. You will be aware of the information provided by Appellants by way of newspaper ads, false or misleading claims made in the Petition

sign-up sheets and the various postcards mailings, including particularly grossly misleading Photoshop-ed photographs, and continued references suggesting "the purpose of the solar project is to sell power to California" - rhetoric to incite conduct in violation of Federal laws, particularly the dormant Commerce Clause.

We are mindful of the statement in the Staff report (8/5) that "significant public comment from members of the public, particularly those who live adjacent to, or in the neighborhood (vicinity) of the subject location, may also be substantial evidence which the Board can take into consideration in evaluating findings (B), (C), (D), (E), and (H). (citations omitted). We also wish to remind you that Appellants are the only people who live adjacent to the subject location and that there is a buffer of at least 1/2 mile from the project boundaries to any public road and that the closet neighborhood to the project, south of Muller lane, is the MGSD plant.

Please let us know how your office intends to instruct the Commissioners as regards the evidentiary value of this public comment generated by the Appellant based on (i) misleading statements made in his extensive lobbying campaign against this project, including deceptive images and inflammatory rhetoric intended to incite anti-California sentiment in violation of Federal laws on interstate commerce. From a due process perspective we feel very strongly that our constitutional procedural rights to a fair hearing would be violated by the Commission weigh such public comments procured on the basis of false and/or misleading premises.

DEREK FROMM

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OFFICE OF THE DISTRICT ATTORNEY
DOUGLAS COUNTY

Mark B. Jackson
District Attorney

MEMORANDUM

TO: Douglas County Board of Commissioners
James R. Nichols, County Manager
Mimi Moss, Community Development Director

FROM: Cynthea Gregory, Deputy District Attorney

DATE: July 1, 2015

RE: Legal Standard for Analyzing Special Use Permit - Appeal Number AP15-006

This memorandum is being provided to clarify the applicable legal standard and elements the Board of County Commissioners¹ (Board) should consider in its deliberations on whether to grant or deny the special use permit (SUP) appeal regarding a solar photovoltaic facility requested by Greenstone Renewables, LLC (Greenstone) on property owned by Park Ranch Holdings, LLC (Park) and zoned Agricultural, 19 acres minimum lot size (A-19).

The duty of the Board is to listen to all the evidence presented and make a determination per Douglas County Code (DCC) Chapter 20.604² as to whether the solar photovoltaic facility is an appropriate use at the identified location which serves the best interests of Douglas County³. It is each individual Board member's duty to evaluate and weigh the evidence presented. Voluminous, significant and substantive evidence, in favor and against the item, has been submitted to the Board by Community Development staff, Greenstone Renewables, Steve and Mary Walker (Walkers) and the public.

Greenstone, through Brad Johnston, Esq., submitted a supplemental letter to the Board dated June 25, 2015, which asserts the appeal must be denied as a matter of law as the Board has "no room to overturn the Planning Commission's decision." That statement is not correct and does not set forth the proper legal standard.

First, it is well settled in Nevada law that a special use permit is a discretionary permit⁴. A discretionary permit is a permit which can either be granted or denied based on each individual Commissioner's judgment of the evidence applied to the SUP standards in Chapter 20.604. The SUP process would be rendered meaningless for solar photovoltaic facilities if the analysis was merely based on a "less intrusive" standard as promulgated by Greenstone. Additionally, while Nevada does not guarantee a property owner a right to a certain specific view, absent a view easement; visual considerations and impacts are required to be evaluated in denying or approving a special use permit application.

The declaration by Greenstone that the Board must evaluate the application by comparing the solar photovoltaic facility use to other uses allowed by right within A-19 and therefore must

¹ The Board is sitting as the Board of Adjustment per NRS 278.310, DCC 20.604.070 and 20.38.

² See DCC 20.604.070, the Planning Commission's decision is a recommendation on appeal.

³ *County of Douglas v. Alpine View Estates* 122 Nev. 1663 (2006), decision without published opinion.

⁴ *City of Las Vegas v. Laughlin* 111 Nev. 557(1995).

EXHIBIT (for identification only)
Filed 7/1/15
By [Signature] Deputy

deny the appeal as solar is “less intrusive” is flawed and erroneous. There is no “less intrusive” standard in Douglas County Code or Nevada Revised Statutes as applied to special use permit applications.

The standard in Douglas County is set forth in DCC 20.604.060 Findings. It should be noted none of the terms: “less intrusive,” “compare” or “uses permitted by right” are found in the actual code language nor can they be read into the code. Greenstone’s argument is an attempt to hijack the Board’s legislative authority and rewrite the SUP findings. The Board previously exercised its legislative authority by requiring solar photovoltaic facilities to be individually reviewed through a SUP when Ordinance 2014-1416 was first adopted⁵. The proponent seeking passage of Ordinance 2014-1416 specifically requested the Board designate the solar photovoltaic facility use as one that should be permitted by right in A-19 zoning districts⁶. Ultimately, the Board rejected the proposal for solar photovoltaic facilities to be a use permitted by right in A-19 and appropriately exercised its legislative and policy decision making authority regarding uses within zoning districts. It is illogical to assert a “less intrusive” standard in evaluating a special use permit; as once a “less intrusive” use was determined then by default that “less intrusive” use would always be allowed in the A-19 zoning district regardless of appropriateness, location or impacts. Also flawed is Greenstone’s contention the County’s right to farm code provisions are relevant to the SUP analysis. The right to farm⁷ provisions address agricultural operations and uses allowed by right as acknowledged by Greenstone⁸. However the current request is for a utility use⁹ which is only allowed by SUP in A-19, thus the provisions are only relevant to the extent the SUP is granted and Greenstone/Park Holdings must record an additional, new deed restriction per DCC 20.01.100(D) to provide notice regarding the new permitted special use.

In Douglas County, individual review of the appropriateness¹⁰ of a solar photovoltaic facility at a specific location is required to ensure the general welfare of the community¹¹ per DCC 20.604.010.

DCC 20.604.010 Purpose and Intent

A. Specially permitted uses are those uses which are generally compatible with the land uses permitted by right in a given zoning district, but which require individual review of their location, design and configuration and the imposition of conditions to ensure the appropriateness of the use at a particular location within a given zoning district. *Emphasis Added.*

The Board mandated individual review via a SUP¹² consistent with its legislative authority delegated by the 2013 Nevada Legislature per NRS 278.26503, which states:

⁵ September 2014.

⁶ See Development Application 14-035, zoning text amendment by E.ON Climate & Renewables.

⁷ DCC 20.1.100.

⁸ See Attachment N, Memo to Board of County Commissioners dated June 24, 2015, pg. 8, Rebuttal (iii)(c).

⁹ See DCC 20.658.020 & 20.660.130.

¹⁰ NRS 278.315 Granting of Special Use Permits and 278.250 Zoning District and Regulations.

¹¹ NRS 278.020 (1).

¹² DCC 20.654.020.

NRS 278.26503 Each governing body: . . .

(3) Shall establish a process for the issuance of a special use permit for the construction of a renewable energy generation project¹³ with a nameplate capacity of 10 megawatts¹⁴ or more . . .

The correct legal standard, elements and considerations are set forth below. The key determination in reviewing a SUP development application and appeal is whether the proposed use is appropriate in the specific location. "If the appropriateness of the use cannot be assured at the location, the application for special use permit shall be denied as being incompatible with existing use or uses permitted by right in the district." See DCC 20.604.060 *emphasis added*. The legal mandate is not to rubber stamp a SUP application that is allegedly "less intrusive" but for the Board and/or Planning Commission to evaluate and assess the impact, compatibility and appropriateness of the use in the proposed location in relation to the Douglas County Master Plan, Code and surrounding properties.

DCC 20.604.060 Findings

When considering applications for a special use permit, the commission or board, where applicable, must evaluate the impact of the special use on and its compatibility with surrounding properties and neighborhoods to ensure the appropriateness of the use at a particular location and make the following findings:

A. The proposed use at the specified location is consistent with the policies embodied in the adopted master plan and the general purpose and intent of the applicable district regulations;

B. The proposed use is compatible with and preserves the character and integrity of adjacent development and neighborhoods and includes improvements or modifications either on-site or within the public rights-of-way to mitigate development related adverse impacts, such as traffic, noise, odors, visual nuisances, or other similar adverse effects to adjacent development and neighborhoods. These improvements or modifications may include, but shall not be limited to the placement or orientation of buildings and entryways, parking areas, buffer yards, and the addition of landscaping, walls, or both, to mitigate such impacts;

C. The proposed use will not generate pedestrian or vehicular traffic which will be hazardous or conflict with the existing and anticipated traffic in the neighborhood;

D. The proposed use incorporates roadway improvements, traffic control devices or mechanisms, or access restrictions to control traffic flow or divert traffic as needed to reduce or eliminate development impacts on surrounding neighborhood streets;

E. The proposed use incorporates features to minimize adverse effects, including visual impacts and noise, of the proposed special use on adjacent properties;

¹³ NRS 278.0173 and 278.01735.

¹⁴ "Applicant is seeking to establish a utility scale solar energy facility producing up to 40 megawatts. . ." Community Development Staff report 01-13-15, pg. 2/5.

F. The project is not located within an identified archeological or cultural study area, as recognized by the county. If the project is located in a study area, an archeological resource reconnaissance has been performed on the site by a qualified archeologist and any identified resources have been avoided or mitigated to the extent possible per the findings in the report;

G. The proposed special use complies with all additional standards imposed on it by the particular provisions of this chapter and all other requirements of this title applicable to the proposed special use and uses within the applicable base zoning district, including but not limited to, the adequate public facility policies of this title; and

H. The proposed special use will not be materially detrimental to the public health, safety, convenience and welfare, and will not result in material damage or prejudice to other property in the vicinity. *Emphasis Added.*

In Nevada, there is no statutory right to specific view, absent a view easement; Greenstone is correct in this aspect. It should be recognized there are uses currently permitted or allowed within the A-19 zoning district, which if exercised, would change the Walker's existing view. However, the proposed use is not permitted by right, and the analysis for a special use does take into account the impacts the proposed project at the proposed location may have on views. DCC 20.604.060 (A), (B), (E) and (H) all require the Board to evaluate and assess any possible visual nuisances or visual impacts which may or may not be created by the subject application and which may be materially detrimental to the public health, safety, convenience and welfare, and result in material damage or prejudice to other property in the vicinity on the surrounding properties.

The application must be consistent with Douglas County Master Plan Goals and Policies and zoning codes per finding (A). The Master Plan is the County's comprehensive, long-term general plan for the physical development of the real property¹⁵. The Master Plan is over 300 pages and contains numerous goals and policies. While the Board must consider the Master Plan, it is not a legislative straightjacket¹⁶ which requires approval or disapproval of this particular SUP. The Board must consider the elements, goals and policies, discuss how the project would impact the County, including both the surrounding properties and neighborhoods, and make the decision it believes is best as to whether or not the use in the specific location is consistent with the Master Plan as required by finding (A).

Also, significant public comment from members of the public, particularly those which live adjacent to, or in the neighborhood (vicinity) of the subject location, may also be substantial evidence¹⁷ which the Board can take into consideration in evaluating findings (A),(B), (E) and (H). In order to rely on the comments, the Board must determine the statements are those which a reasonable mind might accept as adequate to support a conclusion.

In conclusion, the Board must exercise its discretion in evaluating the current SUP appeal. The Board can choose to either grant or deny the appeal based on each individual Commissioner's judgment of the evidence applied to the SUP standards in DCC Chapter 20.604.

¹⁵ NRS 278.250.

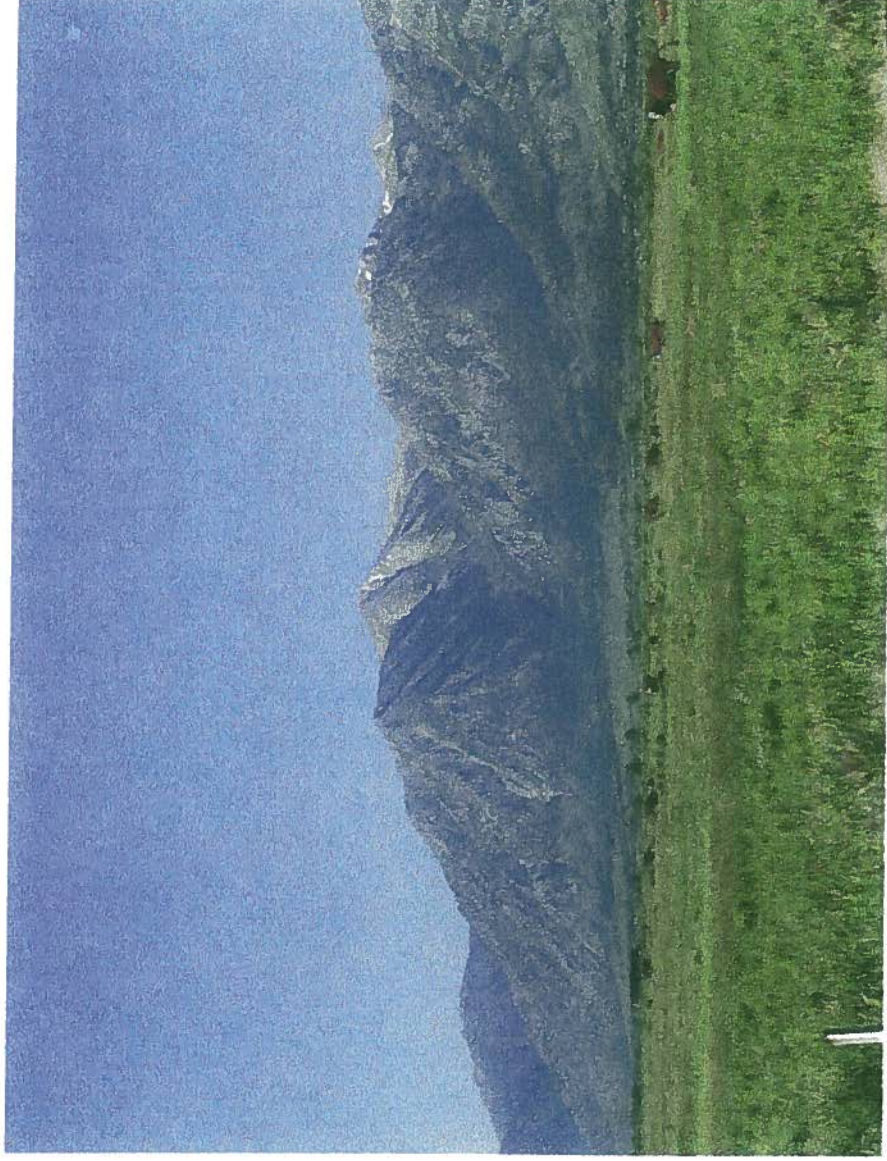
¹⁶ *Clark v. Doumani*, 114 Nev. 46 (1998), overruled on other grounds.

¹⁷ *Stratosphere Gaming Corp. v. City of Las Vegas*, 120 Nev. 523 (2004) and *Redrock Valley Ranch v. Washoe County*, 127 Nev. Adv. Op. 38 (2011).

Appeal of Planning Commission Approval of Development Application (DA) 15-013 SUP for Solar Photovoltaic Facility on A-19 Zoning

1

EXHIBIT (for identification only)
Filed 11/15/15
By [Signature] Deputy



**Site of Proposed Solar Industrial Plant-picture taken
June 12, 2015.**

WHY IS CARSON VALLEY SO BEAUTIFUL?

IT IS BECAUSE OF IT'S INCREDIBLE NATURAL BEAUTY

AND BECAUSE OF OUR HERITAGE OF STEWARDSHIP OF OUR FOREFATHERS.

**The Douglas County Board of County
Commissioners continued this
stewardship by approving the
moratorium on solar photovoltaic
facilities in June of 2015.**

The moratorium on solar plants allows the County time to thoughtfully consider and evaluate the County's adopted regulations, process, criteria and policy considerations, conformance with the Master Plan and *any impact on the quality of life for Douglas County residents and impact on the health, safety, morals and general welfare of the community these solar plants may bring.*

**THANK YOU FOR IMPLEMENTING THE
MORATORIUM.**

Now, to the Appeal:

The Appeal of the Douglas County Planning Commission's approval of the Greenstone Development Application should be approved.

The Planning Commission's decision was erroneous because it ignored, did not comply with or was in direct conflict with several provisions of the Master Plan.

The Walker's fully support and concur with the County's staff Attachment O that details how the Solar Project does not meet the following findings in the County Code, Master Plan and recommendation of the Valley Vision Plan. To save time and limit redundancy we will speak to some of their specific findings and provide addition comment. The specific findings that were not met per the Attachment O include:

Findings A, B, E & H of Section 20.604.060 of the Douglas County Development Code

Ag Policy 1.4

Ag Policy 2.2

Land Use Goal 2

NCSA Goal 1

Policy 15.1 Environmental Resource & Conservation Element

Environmental Principal 1 of the Valley Vision Plan

Examples of the staff's finding are:

Per County staff, “The proposed project cannot be mitigated to avoid negative visual impacts, particularly glare, to the neighboring residential area, including the hillside residential areas. No evidence that glare can be fully mitigated has been provided. The landscape buffer and the setbacks will not adequately address the visual impacts.”

Staff further states: “Additionally, the proposed use will be materially detrimental to the public welfare as it is inconsistent with the Valley Vision Plan. While the Vision Plan states it is not a regulatory plan or official planning document, it is still relevant to the SUP process regarding approval or denial of specific projects.”

Staff states: “The appellant has submitted compelling data that the proposed project will result in material damage to other property, specifically adversely and substantially impacting property values of the appellant’s home. The appellants provided various examples of cases where the placement of utilities were found to adversely impact property values. These examples are found on pages 10-12 of the letter of appeal.”

The proposed use will not serve the needs of our community. The proposed use will displace existing wildlife habitat. Per NDOW, the impact on habitat cannot be avoided or minimized.

NDOW states in the April 27, 2015 letter “The proposed solar project occurs near the confluence of the East and West Forks of the Carson River with many sloughs and ditches nearby that provide habitat for wildlife and are utilized by many Species of Conservation Priority...the project site occurs on lands that have been developed for pastureland, but are used by many wildlife species...the development of the project will likely make these pasturelands unsuitable for some wildlife.”

The Applicant was not required by the County to provide any type of environmental review to determine the industrial plant's effects on Carson Valley wildlife, birds, soil and ground/surface water contamination not just from the solar panels but the Greenstone proposed "battery storage facility." What type of toxic material will be entailed in a "battery storage facility?" The battery facility is on an additional 40 acres bringing the total acreage of the project to nearly 300 acres.

How is a “battery storage facility” compatible with agriculture and residential areas? The facility is on 40 acres which is 1.7 million square feet. There has been no discussion of the facility with the exception of staff stating it would be an accessory to the solar plant and only require design review.

This is an industrial use, not an agricultural or residential use.

Per Greenstone, the project requires the elimination of the pastureland's only stable irrigation source from the MGSD's reclaimed water.

How is the elimination of an agricultural irrigation source compatible with agriculture?

The solar plant will negatively impact the land, including vegetation removal resulting in damaging erosion, weed invasion and dust problems.

How can soil erosion and weed invasion be compatible with agriculture?

The solar plant requires a series of large, all weather fire roads that will be built above grade and compacted.

How can the building of fire roads above existing grade be compatible with surface irrigated agriculture?

The proposed solar power plant is so large, it encompasses 260 acres of 148,277 solar panels and a 40 acre battery storage facility for a total combined 300 acre project.

There is nothing the Applicant can do to mitigate the adverse visual nuisances from this project...it is so large, it can never be screened from view from any adjacent residences, hillside residences, recreationists or motorists on Hwy 395, Muller Lane, Genoa Lane or Kingsbury Grade.

Per County staff, “the proposed solar industrial plant is inconsistent with LU Goal

2. The proposed site is centrally located and identified in the Valley Vision Plan and the Open Space and Agricultural Lands Preservation Implementation Plan as contributing to the rural character that defines the community, and identified as a view corridor.”

“Under the Environmental Principles, Principle 1 of the Valley Vision Plan states “Enhance and protect scenic vistas, rural character, and the highly valued quality of life dependent on these resources.” This specific area is identified for view preservation due to having these characteristics.”

Per County staff, “the proposed project in the specific location does not meet the purpose and intent of the zoning regulations...Reading the general purpose in conjunction with the A-19 district purpose, the proposed project at the specific location undermines the purpose the county set forth to achieve.”

The Open Space and Agricultural Lands Preservation Plan states “And even though only a small part of the population lives a truly rural lifestyle today, nearly everyone who sees the

Carson Valley when driving over Kingsbury Grade values the view of irrigated ranches dotted by barns, horses and thousands of cattle. People are keenly protective of the visual rural character of Douglas County; retaining the most characteristic view corridors is a high priority of this plan.”

The proposed solar industrial plant is in direct conflict with Policy 15.1 of the Environmental Resources and Conservation Element: *The county shall support the development of non-polluting renewable energy sources, such as solar, wind and geothermal energy, through provisions of appropriate land use designation and development regulations, which provide for on-site use of the energy resources.*

How could one find the Greenstone application is in compliance to this policy to “provide for on-site use of the energy source” when the benefit is an off-site use for Liberty Energy?

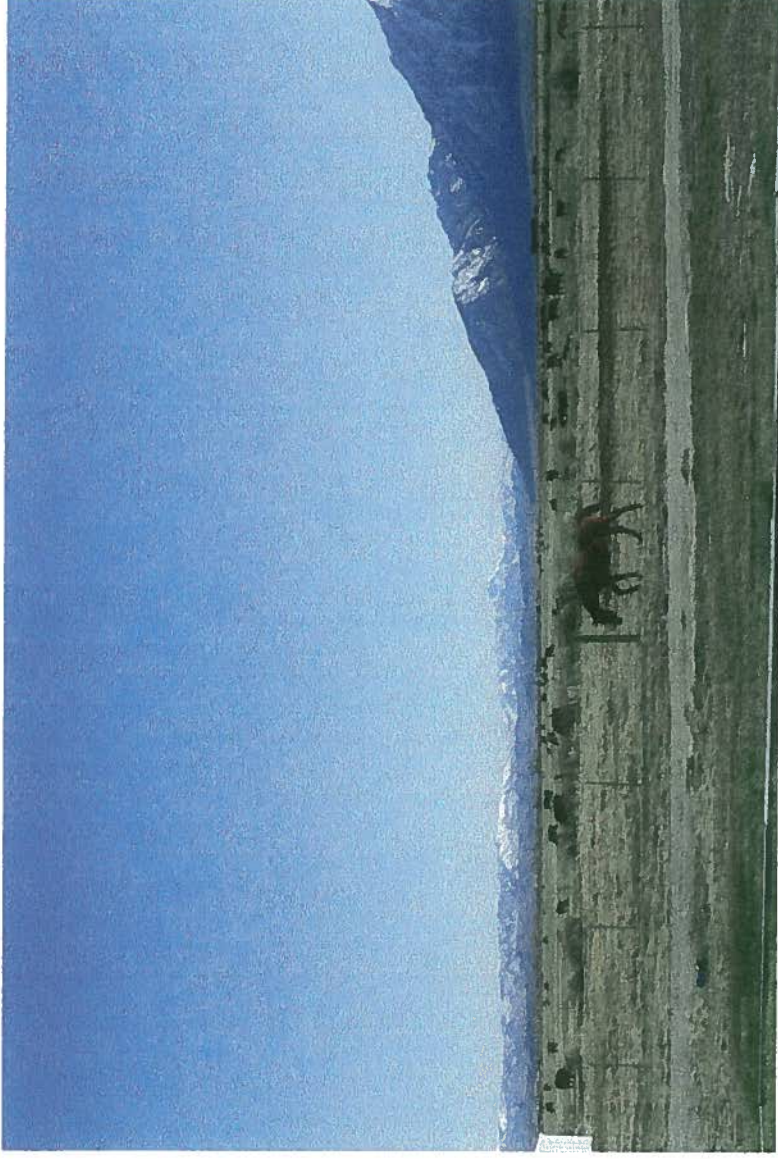
The Greenstone solar industrial plant is in direct contradiction to the Master Plan Policy 15.1. To allow off-site use would require a Master Plan amendment.

Per the County staff report, the proposed project has generated a significant amount of community interest with letters to the editor in the local paper, over 100 phone calls and over 100 emails, with emails and phone calls still being received as the staff report was being prepared. Nearly everyone who has contact the County staff is opposed to the project, citing visual impacts, noise, wildlife impacts and incompatibility with the community and the Master Plan.

In addition, as of June 29th, there are over 700 signatures to the Petition against this solar industrial plant. The signatures were gathered by various citizens and businesses concerned about the projects impact to Carson Valley.

County staff states: “Citizen testimony, both oral and written, have overwhelmingly expressed the proposed use is not appropriate in the location. The utility use, size and location are incompatible with the ag uses surrounding the location on at least three sides.”

Community opposition to the proposed solar industrial plant at this location is the most broad based issue the Walkers have ever seen. The over 700 citizens signing the Petition against this industrial plant were rich, poor, middle class, Native American, Hispanic, Caucasian, Republican, Democrat, Pro-SGI, Anti-SGI, young and old, people who sold their homes and moved here a few months ago to people who were born and raised here. The 700 citizens who signed the Petition represent a true cross section of the community.



Site of the Proposed Solar Industrial Plant-Photo Taken May, 2010

The site is a 100% fully operational cattle ranch which is irrigated by reclaimed water and Carson River water rights dating back to 1858, some of the oldest water rights in Carson Valley.



**Site of Proposed Solar Industrial Plant as it exists today
Picture taken June 12, 2015.**

The site of the proposed solar industrial plant is a 100% fully operational cattle ranch with average Carson Valley soils on 80% of its area and alkali soils on 20% of its area which can be treated to improve its production.

Per County staff: “There is no demonstrated need for present or future renewable public facilities at this location for the County or the State of Nevada.

However, in contrast, the County has repeatedly and frequently articulated its need, desire and priority for preserving its agricultural lands, heritage and culture, including identifying this specific location as important to achieving those goals as set forth in the Open Space Plan.”

Daniel Leck Testimony Certified General Appraiser in the State of Nevada.

CONCLUDING REMARKS:

The Planning Commission decision was in error because it ignored, did not comply with or was in direct conflict with several provisions of the Master Plan included in Findings A, B, E and H as identified in Section 20.604.060 of the Douglas County Code.

**We request your approval to grant
the Appeal and Deny Development
Application (DA) 15-013, a request
for a solar photovoltaic facility on
irrigated pastureland in the heart
of Carson Valley.**

THIS IS A THRESHOLD ISSUE AT A
THRESHOLD TIME. IF WE DON'T
CONTINUE OUR HERITAGE OF
STEWARDSHIP, THE DECADES OF
WORK OUR FOREFATHERS DID TO
PRESERVE THIS VALLEY WILL BE
FOR NAUGHT.
THANK YOU FOR LISTENING.